

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ANGEL AVILES,

Petitioner,

v.

THOMAS DICKHAUT,

Respondent.

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**Civil Action No.
12-cv-40017-FDS**

ORDER VACATING DISMISSAL

SAYLOR, J.

This is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 by a person in state custody. On April 10, 2013, the Court issued a memorandum and order finding that petitioner Aviles had failed to exhaust his available state remedies as to some of the claims contained in the petition. Accordingly, the Court ordered that respondent's motion to dismiss the petition would be granted unless, within 30 days, petitioner filed a request to dismiss the unexhausted claims in his petition and proceed on the merits of the exhausted claims. On May 15, having received no such request from petitioner, this Court granted the respondent's motion to dismiss. However, the Court has recently been made aware of a letter from petitioner received by the clerk on May 15, and dated May 9, requesting that the unexhausted claims in his petition be dismissed so that he may proceed on the merits of the exhausted claims.

Filings by *pro se* prisoners are liberally construed and are generally held to less stringent standards than formal pleadings by a lawyer. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Voravongsa v. Wall*, 349 F.3d 1, 8 (1st Cir. 2003). Viewing petitioner's letter in this light, because it was received by the Court within a very short period of time after the proscribed 30-

day period had expired, the Court will treat it as timely. Accordingly, the Court's order granting respondent's motion to dismiss the petition, and the subsequent dismissal order will be vacated. The unexhausted claims in the petition will be dismissed, and petitioner will be permitted to proceed on the merits of his exhausted claims only.

For the foregoing reasons, the Court's order granting respondent's motion to dismiss the petition, and the Court's order dismissing the case are VACATED; and the unexhausted claims in the petition are DISMISSED.

So Ordered.

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge

Dated: May 16, 2013